IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 1982 of 2005

Between:

M.Sangameswara Rao, s/o late M.S.N.Sastry,
(S.I. of RPF, E.Co.Rly, Waltair) r/o Plot No.7, Gokul Dham, Purushothampuram, Bhaskararao Constructions, Near Pendurthi, Visakhapatnam, A.P.,

..... PETITIONER

AND

1 The Sr.Divisional Security Commissioner, Railway Protection Force, East Coast Railways, Waltair Division, Visakhapatnam A.P.,
2 Sri V.Seshadri, Asst.Security Commissioner, Railway Protection Force,

East Coast Railway, Waltair Division, Visakhapatnam, A.P.,
3 Sri V.K.C.Reddy, Dy.Superintendent of Police, C.8.I., D.No.1-83/21/A, MVP Colony,

sector-8, Visakhapatnam, A.P.
4 The Divisional Security Commissioner,

Railway Protection Force, East Coast Railway, Sambalpur Division, Sambalpur District, Sambalpur Orissa.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ or order or direction more particularly one in the nature of writ of mandamus declaring the action of the 1st respondent in appointing the action of

fourth respondent in initiating departmental proceedings with vague allegations vide charge sheet Memorandum No.DA/3-2004/153/1601 DATED 27-08-2004 duly nominating third respondent as presenting Officer vide proceedings No.SBP/DA/153/51/MSR/2005 dated 20-01-2005, as illegal, contrary to the RPF Rules, apart from violative of Articles 14 and 16 of the Constitution of India and consequently mandamus the charge sheet Memorandum No.DA/3-2004/153/1601 dated 27-08-2004 of the fourth respondent, and pass such other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.J.M.NAIDU

Counsel for the Respondents: MR.GOURI SHANKAR SANGHI

The Court, at the admission stage, made the following :

THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO : 1982 of 2005

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ORDER:

Challenging the allegations vide Charge Sheet Memorandum No.DA/3-2004/153/1601, dated 27-08-2004 issued by the 4th respondent appointing third respondent as Presenting Officer vide proceedings dated 20-01-2005, the present writ petition has been filed.

2. The facts are not in dispute. The only point raised by the learned counsel for the petitioner is that the Railway Rules, 1987 (for brevity 'Rules, 1987') do not provide for appointment of an Officer from outside the department of Railway Protection Force. Whereas, in this case, the Deputy Superintendent of Police, Central Bureau of Investigation, was appointed as a Presenting Officer to conduct the case against the petitioner in the departmental enquiry. But he is separate and distinct authority without any connection with the Railway Police Force Department. According to him, with regard to the

appointment of an Officer, Rule 146 of the Rules, 1987, applies only to the superior officers but not to the subordinate officers and hence, there is no rule providing for the respondents 1 and 2 to appoint third respondent as a Presenting Officer.

3. Per contra, the learned Standing Counsel for the respondent-Railways contended that the Rule 146 of the Rules, 1987, will squarely apply not only to the superior officers but also to the subordinate officers since the said Rule applies to all the members of the Railway Protection Force irrespective of their ranks.

4. Be that as it may, the Railway Servants (D&A) Rules, 1968 (for brevity 'Rules, 1968') would govern the disciplinary matters. Now, the issue relates to the question as to whether the Rules, 1968 will be applicable to the members of the subordinate Force.

5. It is not in dispute that the petitioner is a member of the subordinate servants. As per Rule 9 (c) of the Rules, 1968, "where the disciplinary authority itself inquires into an article of charge or appoints a Board of Inquiry or any other inquiring authority for holding an inquiry into such charge, it may, by an order in writing appoint a Railway or any other Government servant to be known as 'Presenting Officer' to present on its behalf the case in support of the articles of charge."

6. On perusal of the above provision, it is made clear that the person can be appointed as Presenting Officer not only from the Railways but also from the other Government Department. So, if this Rule applies to the present set of facts, the impugned order does not suffer from any legal infirmities.

7. However, the learned counsel for the petitioner contended that all these rules have no application to the subordinate officers but apply only to the superior officers. At this juncture, it is relevant to note Rule 146 of the Rules, 1987, which reads as follows:

> **"146. Code of behaviour for members of the Force.—**(1) All members of the Force, irrespective of their ranks, shall submit themselves to the requirement of the following code of behaviour, both on and off duty. It shall be incumbent upon all members of the Force to respect the code of behaviour and maintain an attitude of complete discipline and obedience to it.

Any breach of these provisions on the part of any member of the Force shall constitute misconduct and shall be punishable under the Railway Servants (Discipline and Appeal) Rules, 1968 as applied to superior officers or, as the case may be, under Section 9 or
Section 17.

(2) Neglect of duty:--

No member of the Force without good and sufficient cause shall—

(i) neglect or omit to attend or fail to carry out with due promptitude and diligence anything which is his duty as a member of the Force to attend to or carry out; or

(ii) fail to work his beat in accordance with orders or leave the place of duty to which he has been ordered or having left his place of duty for a *bonafide* purpose fail to return thereto without undue delay; or

(iii) be absent without leave or be late for any duty; or

(iv) fail properly to account for, or to make a prompt and true return of and money or property received by him in the course of his duty.

(3) Disobedience of orders:--

No member of the Force shall—

(v) disobey or omit or neglect to promptly carry out any lawful orders, written or otherwise; or

(vi) contravene any provision of the Act, these rules or Directives containing restriction on the private lives of the members of the Force or requiring him to notify the Chief Security Commissioner concerned that he, or a relation included in his family, has business interest in his jurisdiction within the meaning of these rules and Directives.

(4) Discreditable conduct:--

No member of the Force shall act in any manner prejudicial to discipline or conduct himself in such a manner which is reasonably likely to bring discredit to the reputation of the Force.

(5) Misconduct towards a member of the Force:--

No member of the Force shall:--

(a) conduct himself towards another member fo the Force in oppressive or abusive manner; or

(b) assault or misbehave with such member.

(6) Falsehood or prefabrication:--

No member of the Force shall—

(i) knowingly or through neglect make any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for the purpose of Force; or

(ii) either willfully and without proper authority or through lack of due care destroy or mutilate any record or document made, kept or required for the purpose of the Force,; or

(iii) without good and sufficient cause alter or erase or add to any entry in such a record or documents; or

(iv) knowingly or through neglect make any false, misleading or inaccurate statement in connection with his appointment to the Force.

(7) Corrupt or improper practice:--

No member of the Force shall—

(i) in his capacity as such member and without the written consent of the Chief Security Commissioner concerned directly or indirectly solicit or accept any gratuity, present or subscription; or

(ii) place himself under a pecuniary obligation to any person in such a manner as might affect the proper discharge of his duties as such member; or

(iii) improperly use or attempt so to use, his position as such member for his personal gain.

(8) Abuse of authority:--

No member of the Force shall—

(a) without good and sufficient cause make an arrest; or

(b) use any unnecessary violence towards any under-trial prisoners or other persons with whom he comes into contact in the execution of his duty.”

8. A perusal of Rule 146 of the Rules, 1987 made clear that it applies both to the superior officers as well as subordinate officers. The learned counsel for the petitioner perhaps under the impression that the Rules, 1968 apply only to the superior officers, based on the wordings- *"shall be punishable under the Rules, 1968 as applied to superior officers"-,* and contended that Rule 146 of the Rules, 1987 applies only to the superior officers.

9. It is one of the cardinal principles of interpretation that the entire Rule has to be read to ascertain the true meaning of the Rule. On perusal of the entire Rule, it is clear that the Rule 146 of the Rules, 1987 applies to all members of the Reserved Police Force irrespective of their ranks.

10. The learned counsel for the petitioner placed reliance on Rule 132 (2) of the Rules, 1987, which says that the enrolled members of the Force shall, in such matters, be governed by the rules in Chapter XI and Chapter XII. There is no dispute that Rule 146 of the Rules, 1987 lies in the Chapter-XI. If Rule 146 of the Rules, 1987 is applicable to the subordinate officers also, interpretation of sub rule (2) of Rule 132 does not arise.

11. Therefore, in my considered opinion, Rule 146 of the Rules, 1987 applies not only to the members of the superior officers but also to the subordinate officers. In such a case, Rules, 1968 will also apply to the members of the subordinate officers. Hence, the order under challenge does not suffer from any legal infirmities so as to calling interference by this Court.

12. Accordingly, the writ petition is devoid of merit and is accordingly dismissed. No costs.

February 17, 2005

KVR

To

1. The Senior Divisional Security Commissioner, Railway Protection Force, East Coast Railways, Waltair Division, Visakhapatnam A.P.,

2. The Divisional Security Commissioner,

Railway Protection Force, East Coast Railway,
Sambalpur Division, Sambalpur District, Sambalpur Orissa.

3. Two C.D copies.